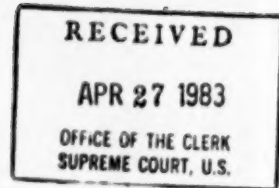
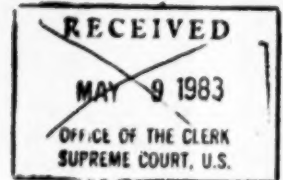


82-6726
CASE NUMBER



UNITED STATES SUPREME COURT

1983 TERM



RANDOLPH E. NEAL, JR.-----APPELLANT

VERSUS

THE STATE OF ALABAMA-----APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

CASE NUMBER: CR-83-HM-0024-NE

JURISDICTIONAL STATEMENT

RANDOLPH E. NEAL, JR., PRO SE
ATTORNEY FOR APPELLANT
2211 BIDE-A-WEE DRIVE, NE
HUNTSVILLE, ALABAMA 35801

JURISDICTIONAL STATEMENT

QUESTIONS PRESENTED

I. DID THE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHEASTERN DIVISION, ERR IN HIS DISMISSAL OF PETITIONER'S PETITION FOR REMOVAL OF CASE FROM STATE COURT TO FEDERAL COURT AND PETITION FOR WRIT OF HABEAS CORPUS, THEREBY DENYING PETITIONER EQUAL PROTECTION OF THE COURTS?

II. IS A DEFENDANT IN A CRIMINAL CASE IN A MUNICIPAL COURT OF THE STATE OF ALABAMA ALLOWED TO HAVE THE RIGHT GUARANTEED UNDER THE CONSTITUTION OF THE UNITED STATES TO A JURY TRIAL IN ALL CRIMINAL PROCEEDINGS?

III. WAS THE CASE IN THE MUNICIPAL COURT DUE TO BE TRANSFERRED TO THE CIRCUIT COURT, WHERE A JURY TRIAL COULD BE HAD STATUTORIALLY, UPON SUBMISSION OF DEFENDANT'S WRITTEN DEMAND FOR A JURY TRIAL?

IV. DID THE UNITED STATES DISTRICT COURT JUDGE ERR IN NOT AFFORDING THE PETITIONER THE PROTECTION OF, AND ACCESS TO, THE UNITED STATES COURTS, AFTER PETITIONER HAD PLEAD THE FACT THAT HE HAD BEEN IMPRISONED FOR DEBT BY THE MUNICIPAL COURT, IN HIS PETITION FOR REMOVAL OF CASE FROM STATE COURT TO FEDERAL COURT AND PETITION FOR WRIT OF HABEAS CORPUS; WAS THERE AN IMPRISONMENT FOR DEBT IN THE MUNICIPAL COURT?

PARTIES TO THE PROCEEDING IN TRIAL
COURTS BELOW

- A. RANDOLPH E. NEAL, JR.---DEFENDANT IN THE MUNICIPAL COURT, EX PARTE PETITIONER IN THE CIRCUIT COURT, EX PARTE PETITIONER IN THE UNITED STATES DISTRICT COURT.
- B. THE CITY OF HUNTSVILLE---PLAINTIFF IN THE MUNICIPAL COURT, RESPONDENT/PLAINTIFF IN THE CIRCUIT COURT.
- C. THE STATE OF ALABAMA---RESPONDENT IN THE UNITED STATES DISTRICT COURT.
- D. NO OTHER KNOWN PARTIES.

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STATEMENT OF THE GROUNDS ON WHICH JURISDICTION IS INVOKED

JURISDICTION OF THIS CASE BY THE SUPREME COURT IS CONFERRED UPON THE COURT BY PROVISIONS OF ARTICLE III., SECTION 2, CLAUSE 2. THE CASE COMES TO THE UNITED STATES SUPREME COURT FROM APPEAL OF THE DISMISSAL OF THE PETITION FOR REMOVAL OF A STATE CASE TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT. THE STATE CASE WAS A CRIMINAL CASE IN WHICH A TRIAL BY STRUCK JURY HAD BEEN PROPERLY DEMANDED AND WAS DENIED THIS DEFENDANT. A SEPERATE ACTION FOR REMOVAL OF THAT CASE, WHICH WAS ORIGINALLY BROUGHT IN THE MUNICIPAL COURT OF THE CITY OF HUNTSVILLE, ALABAMA, TO THE JURISDICTION OF THE MADISON COUNTY CIRCUIT COURT WAS DISMISSED BY THE CIRCUIT COURT. A FEDERAL QUESTION THEN AROSE--WHETHER OR NOT A DEFENDANT IN A CRIMINAL ACTION IN THE MUNICIPAL COURT OF THE CITY OF HUNTSVILLE, ALABAMA WAS TO BE GIVEN A TRIAL BY JURY UPON DEMAND. JURISDICTION TO HEAR THIS QUESTION WAS CONFERRED UPON THE UNITED STATES DISTRICT COURT BY STATUTORY PROVISION, TO-WIT; TITLE 28, U.S.C., SECTION 1446.

THE CASE WAS REMOVED AND THE UNITED STATES DISTRICT COURT JUDGE RULED BY EX MERO MOTU THAT THE PETITION WAS TO BE DISMISSED CITING OBTUSE LEGAL PRECEPTS FOR THAT ACTION. THE CASE WAS BROUGHT PRO SE IN ALL COURTS.

THIS DISMISSAL WAS ENTERED ON JANUARY 25, 1983 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHEASTERN DIVISION FOR HON. E.B. HALTOM, JR., UNITED STATES DISTRICT

JUDGE IN CASE NO. CR-83-HM-0024-NE, NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT WAS FILED IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHEASTERN DIVISION ON FEBRUARY 28, 1983.

THE STATUTORY PROVISION THAT CONFERS JURISDICTION UPON THIS COURT TO HEAR THIS CASE IS: (A) 28 U.S.C., SECTION 2106. JURISDICTION IS ORIGINALLY CONFERRED UPON THIS COURT BY PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES, ARTICLE THREE, SECTION TWO, CLAUSE TWO, AND ARTICLE SIX, CLAUSE TWO.

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS

THE FOLLOWING ARE STATUTORY AND CONSTITUTIONAL PROVISIONS LISTED BY TITLE ONLY, OR NUMERICALLY, AND AS POPULARLY KNOWN, AS FOLLOWS; AND ARE SET OUT IN FULL IN THE APPENDIX:

UNITED STATES CONSTITUTION

1. ARTICLE III., SECTION 2, CLAUSE 3; CRIMINAL TRIAL BY JURY.
2. ARTICLE IV., SECTION 2, CLAUSE 1.; PRIVILEGES AND IMMUNITIES.
3. ARTICLE VI., CLAUSE 2.: SUPREME LAW OF LAND.
4. AMENDMENT V.; CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY.
5. AMENDMENT VI.; JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS.
6. AMENDMENT VIII.; EXCESSIVE BAIL, CRIMES, PUNISHMENTS.
7. AMENDMENT XIV., SECTION 1.; CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT.

UNITED STATES STATUTORY PROVISIONS

1. TITLE 28, UNITED STATES CODE, SECTION 1446; PROCEDURE FOR REMOVAL.
2. TITLE 28, UNITED STATES CODE, SECTION 2101; SUPREME COURT; TIME FOR APPEAL OR CERTIORARI; DOCKETING; STAY.
3. TITLE 28, UNITED STATES CODE, SECTION 2102; PRIORITY⁴ OF CRIMINAL CASE ON APPEAL FROM STATE COURT.
4. TITLE 28, UNITED STATES CODE, SECTION 2104; APPEALS FROM STATE COURTS.
5. TITLE 28, UNITED STATES CODE, SECTION 2106; DETERMINATION.

CODE OF ALABAMA 1975 STATUTORY PROVISIONS

1. TITLE 12, SECTION 11-9; TRANSFER OF CASES BETWEEN CIRCUIT COURT AND DISTRICT COURT.
2. TITLE 12, SECTION 14-1; ESTABLISHMENT; JURISDICTION.
3. TITLE 15, SECTION 8-1; "INDICTMENT" DEFINED.
4. TITLE 15, SECTION 8-2; INDICTABLE OFFENSES.

CONSTITUTION OF ALABAMA 1901

- ARTICLE I., SECTION 20; IMPRISONMENT FOR DEBTS.
- ARTICLE I., SECTION 35; OBJECTIVE OF GOVERNMENT.
- ARTICLE IV., SECTION 89; MUNICIPALITIES NOT TO PASS LAWS IN IN CONFLICT WITH GENERAL LAWS OF STATE.

CONSTITUTION OF ALABAMA 1875

- ARTICLE I., SECTION 7; RIGHT FOR ACCUSED TO BE HEARD BY HIMSELF AND/OR COUNSEL; TO BE CONFRONTED BY WITNESSES; COMPULSORY PROCESS; RIGHT TO A SPEEDY PUBLIC TRIAL; RIGHT TO NOT BE COMPELLED TO GIVE EVIDENCE AGAINST HIMSELF; NOT TO BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY EXCEPT BY DUE PROCESS OF LAW.

CONSTITUTION OF ALABAMA 1875

ARTICLE I., SECTION 8; LAWFUL PROCEEDINGS, EX POST FACTO TRIALS

ARTICLE I., SECTION 9; PROCEEDINGS BY INDICTMENT IN CRIMINAL TRIALS.

ARTICLE I., SECTION 12; TRIAL BY JURY HELD INVIOATE.

ARTICLE I., SECTION 16; EXCESSIVE FINES; CRUEL AND UNUSUAL PUNISHMENT BARRED.

ARTICLE I., SECTION 21; IMPRISONMENT FOR DEBT BARRED.

ARTICLE I., SECTION 37; ENJOYMENT OF LIFE, LIBERTY, PROPERTY PRESERVED; GOVERNMENT USURPATION AND OPPRESSION BARRED.

CASE LAW

DONA HARVEY SLY VS. STATE, ALABAMA CRIMINAL APPEAL, AT 370
SOUTHERN 2d 361 (1979).

STATEMENT OF THE CASE

THIS CASE IS AN APPEAL OF A CRIMINAL CASE INITIATED IN THE MUNICIPAL COURT OF THE CITY OF HUNTSVILLE, ALABAMA. THE CASE WAS BEGUN WITH THE ISSUANCE OF A CITATION AND ORDER TO APPEAR IN THE MUNICIPAL COURT, SAID PROCESS LISTING MR. RANDOLPH E. NEAL, JR. AS THE DEFENDANT, AND THE CITY OF HUNTSVILLE, ALABAMA AS THE PLAINTIFF. THE CHARGE WAS "IMPROPER PASSING".

AS THE CASE CAME UPON AN INFORMATION, AND INDICTMENT WAS THE ONLY LAWFUL MEANS OF PROCEEDING WITH THE TRIAL, AND NO INDICTMENT HAVING BEEN RETURNED BY THE MADISON COUNTY GRAND JURY, EITHER BEFORE, DURING, OR AFTER THE PROCEEDINGS AND TRIAL HAD BEGUN; THE DEFENDANT WAS PUT THROUGH A VOID TRIAL AND IMPROPERLY ADJUDGED

OF GUILT. STATUTORY PROVISIONS ARE SET FORTH IN ALABAMA LAW, WHEREBY A CASE THAT IS NOT PROPERLY BEFORE THE DISTRICT OR MUNICIPAL COURTS OF THAT STATE; AND A CASE WHICH IS, THROUGH SOME JURISDICTIONAL PREREQUISITE, UNDER THE JURISDICTION OF THE STATE'S CIRCUIT COURTS; MAY AND SHOULD BE MOVED FROM ONE TO THE OTHER. IN THIS INSTANT CASE, THE DEFENDANT, THROUGH HIS ATTORNEY, WHO WAS THE SAME, PRO SE, DID PETITION THE CIRCUIT COURT TO REMOVE THE CASE FROM THE MUNICIPAL COURT TO THE CIRCUIT COURT, CITING IN SUPPORT, THEREOF, THE STATUTORY PROVISIONS IN THE ALABAMA CODE (1975) AND FURTHER POINTING OUT THAT NO STATUTORY PROVISIONS EXISTED IN ALABAMA LAW WHEREBY A JURY TRIAL COULD BE HAD IN A MUNICIPAL OR DISTRICT COURT WITHIN THE STATE.

THE CIRCUIT COURT OF MADISON COUNTY, JUDGE LYNWOOD SMITH PRESIDING IN THAT INSTANCE, DECIDED ADVERSELY ON THE REMOVAL PETITION, AND DISMISSED THAT PETITION EX MERO MOTU.

A PETITION FOR REMOVAL WAS THEN ENTERED IN THE UNITED STATES DISTRICT COURT IN HUNTSVILLE, ALABAMA REMOVING THE CASE TO THE JURISDICTION OF THE FEDERAL COURTS, EIGHT DAYS PRIOR TO TRIAL, UNDER PROVISIONS OF TITLE 28 UNITED STATES CODE, SECTION 1446. HABEAS CORPUS WAS APPLIED FOR IN THAT PETITION. THE DEFENDANT HAD BEEN ILLEGALLY IMPRISONED FOR DEBT BY THE MUNICIPAL COURT, AND THIS FACT WAS SET FORTH IN THE PETITIONER'S "PETITION FOR REMOVAL OF CASE FROM STATE COURT TO FEDERAL COURT AND PETITION FOR WRIT OF HABEAS CORPUS".

THIS AFOREMENTIONED PETITION FOR REMOVAL AND FOR WRIT OF HABEAS CORPUS WAS BROUGHT EX PARTE, AS WAS THE PETITION FOR REMOVAL IN THE MADISON COUNTY CIRCUIT COURT. ALL PROCEEDINGS

IN THESE COURTS AS AFOREMENTIONED, WERE CONDUCTED IN FORMA PAUPERIS.

THE DEFENDANT IN THAT MUNICIPAL COURT CASE DEMANDED A JURY TRIAL IN WRITING PRIOR TO TRIAL IN THE MUNICIPAL COURT, WITHIN A REASONABLE PERIOD OF TIME AFTER THE RECEIPT OF THE AFOREMENTIONED CITATION BY THE DEFENDANT, AND CERTAINLY WITHIN A FEW DAYS. NO TRIAL BY JURY WAS FORTHCOMING, HOWEVER, AND IN FACT DEFENDANT'S MOTION FOR A JURY TRIAL WAS DENIED BY THE MUNICIPAL COURT. THE DEFENDANT WAS DENIED HIS GUARANTEED RIGHT TO A JURY TRIAL BY THAT COURT AND THE STATE OF ALABAMA THEREFORE.

THE DEFENDANT DID GIVE NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT IN THE UNITED STATES DISTRICT COURT, WITH SERVICE OF THAT NOTICE HAD UPON THE CITY OF HUNTSVILLE AND THE STATE OF ALABAMA BY PERSONAL SERVICE.

REASONS FOR PLENARY CONSIDERATION

IN SUMMATION

THIS CASE IS A VERY IMPORTANT ONE. THE ISSUES INVOLVED HERE ARE NECESSARILY PRESENTED TO THIS HIGHEST COURT IN THIS LAND DUE TO THE NECESSITY OF PRESERVING THOSE PARTICULAR RIGHTS AND LIBERTIES THAT WERE SET FORTH BY OUR FOUNDING FATHERS OF THIS LAND, TWO HUNDRED YEARS AGO, AND WHICH SUCH RIGHTS AND LIBERTIES THAT ARE SO VERY NECESSARY TO THE PRESERVATION AND CONTINUATION OF THOSE IDEALS AND PRECEPTS THAT ALL CITIZENS OF THESE GREAT UNITED STATES HOLD SO DEAR EVEN AS TO THEIR LIVES, MUST BE UPHOLD AND MUST NOT BE PUT IN JEAPORDY OF BEING SO EASILY

THROWN ASIDE AND TRAMPLED UNDERFOOT TO THE DETRIMENTAL DESTRUCTION OF OUR SYSTEM OF LAW.

OUR LAWS, AS WELL AS OUR LIBERTIES CAME TO US FROM JUST DELIBERATION AND STUDY OF MANY OTHER SYSTEMS OF LAW THROUGH THE HISTORY OF MAN. THIS COUNTRY IS FOUNDED UPON THOSE CAREFULLY DELIBERATED AND JUSTLY REASONED PROCLAMATIONS, NOT THE LEAST . OF WHICH IS OUR UNITED STATES CONSTITUTION, WHICH IS SO PERFECT IN ITS FORESIGHT AND UNDERSTANDING OF FUTURE NEEDS, AND PRECEPTING ALMOST ALL POSSIBLE INFRINGEMENTS UPON THE LIBERTIES OF ALL FREE MEN EVERYWHERE IN ALL COURTS AND TRIBUNALS WITHIN THIS GREAT LAND, THAT IT HAS REMAINED BASICALLY UNCHANGED FOR THESE TWO CENTURIES. THE CONSTITUTION IS THE SUPREME LAW OF THIS LAND; IT IS THE CORNERSTONE OF OUR FOUNDATIONS OF LAW AND JUSTICE. AND IT MUST BE PRESERVED.

IN THIS CASE, IT CAN BE SEEN, CLEARLY, AND WITH NO DOUBT, THAT THE RIGHTS OF ONE CITIZEN OF THIS GREAT REPUBLIC HAVE BEEN CARELESSLY CAST ASIDE, WITH NO REGARD FOR HIS CONSTITUTIONAL RIGHTS NOR HIS LIBERTIES NOR HIS RIGHT TO JUSTICE. THESE GRAVE VIOLATIONS MUST BE CORRECTED IF THIS COUNTRY IS TRULY A JUST LAND. EVEN MORE IMPORTANT IN THE CONSIDERATION OF THIS IMPORTANT CASE, ARE THE RIGHTS OF FREE MEN EVERYWHERE. IF FREEDOM, DEMOCRACY, AND JUSTICE ARE TO BE SO CASUALLY WASHED ASIDE, HOW CAN ANY AMERICAN CITIZEN HOPE TO BE FREE? THE ANSWER IS OBVIOUS--ONE CANNOT.

THESE VIOLATIONS OF BASIC CONSTITUTIONAL RIGHTS ARE REPULSIVE TO ALL AMERICANS, FOR IF THE RIGHT TO A JURY TRIAL IS NOT PRESERVED IN CRIMINAL CASES, WE STAND AN EXCELLENT CHANCE, AND WITH GREAT CERTAINTY WILL FALL INTO THE RUIN AND DESTRUCTION THAT THE OPPRESSIVE POLICE STATE HAS ALWAYS BROUGHT FORTH TO CRUSH THOSE FREEDOMS WE ALL HOLD SO DEAR TO OUR WAYS OF LIFE.

IMPRISONMENT FOR DEBT IS REPULSIVE, IS THE DENIAL OF A TRIAL BY JURY IN A CRIMINAL CASE, AND AS IS THE PROCEEDING AGAINST AN INDIVIDUAL WITHOUT A CLEAR, SET INDICTMENT OF WHATEVER CHARGES THERE ARE AGAINST HIM. EVEN MORE REPULSIVE, IS THE FAILURE BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHEASTERN DIVISION TO AFFORD ITS PROTECTION TO A LIFELONG CITIZEN OF THESE GREAT UNITED STATES. THIS IS A TRAVESTY OF THE GREATEST MAGNITUDE, AND IT MUST BE CORRECTED BY THIS SUPREME COURT OF THE UNITED STATES. TO FAIL TO HEAR THIS CASE, WOULD IMPART SANCTION AND LEGITIMACY TO THESE REPULSIVE ACTS.

THE QUESTIONS HERE PRESENTED BY THIS APPEAL ARE SO SUBSTANTIAL IN WEIGHT AND IN MERIT, THAT THEY MUST BE PROPERLY HEARD BY THIS HONORABLE COURT OF HIGHEST AUTHORITY, THROUGH PROPERLY SUBMITTED BRIEFS AND THROUGH ORAL ARGUMENT IN FRONT OF ALL.

THEREFORE, IT IS THE PRAYERS OF THIS APPELLANT, THAT THIS COURT WILL HEAR THESE PLEADINGS AND WILL JURISPRUDENTIALLY DECIDE HOW TO CORRECT THESE ERRORS IN THE COURTS BELOW.

DONE AND SUBMITTED, RESPECTFULLY, THEN; THIS THE 25th DAY OF APRIL, 1983.

Randolph E. Neal, Jr.

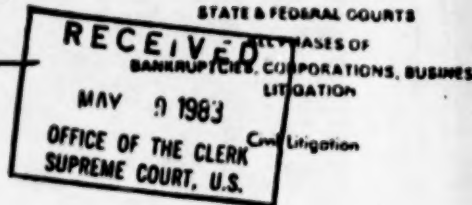
RANDOLPH E. NEAL, JR., PRO SE
ATTORNEY FOR APPELLANT

Randolph E. Neal, Jr.

Private Attorney

RANDOLPH E. NEAL, JR.
2711 BIDE-A-WEE DRIVE
MUNTSVILLE, ALA. 36881
PH. 205 - 334-1361

MAY 5, 1983



MR. ALEXANDER L. STEVAS, CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

DEAR MR. STEVAS:

I AM ENCLOSING THE COMPLETED APPEAL JURISDICTIONAL STATEMENT HEREIN. THE FULL APPENDIX HAS BEEN PREPARED AND HAS BEEN SERVED ON OPPOSING PARTIES AS OF TODAY. TITLE 28, SECTION 2106 READ LITERALLY, CONFERS JURISDICTION UPON THE SUPREME COURT TO HEAR ANY CASE FROM ANY COURT AT ANY TIME, SO LONG AS THE PLEADINGS ARE BROUGHT LAWFULLY TO IT. THIS APPEAL HAS BEEN BROUGHT PROPERLY UNDER APPLICABLE CONSTITUTIONAL AND STATUTORY PROVISIONS. I WOULD APPRECIATE YOUR FILING IT AS SOON AS POSSIBLE.

I WOULD ALSO REQUEST THAT YOU SEND ME FOUR (4) SETS OF FORMS AND OTHER MATERIALS THAT ARE NECESSARY TO BE FILLED OUT TO BECOME A MEMBER OF THIS COURT'S BAR.

PLEASE NOTIFY ME BY MAIL OF THE CASE NUMBER ASSIGNED TO THIS APPEAL. THANK YOU IN ADVANCE FOR YOUR CONSIDERATION.

CORDIALLY YOURS,

Randolph E. Neal, Jr.
RANDOLPH E. NEAL, JR.

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ALABAMA, NORTHEASTERN DIVISION

RANDOLPH E. NEAL, JR.,
PETITIONER

VS.

THE STATE OF ALABAMA,
RESPONDENT

CASE NO. CR-83-HM-0024-WE

FEB 8 1983

NOTICE OF APPEAL TO SUPREME COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JAMES E. VANDEGRIFT, CLERK

COMES NOW THE PETITIONER, MR. RANDOLPH E. NEAL, JR., BY AND
THROUGH HIS ATTORNEY OF RECORD, WHO IS THE SAME, PRO SE, AND NOW
DOES HEREBY ENTER THIS NOTICE OF APPEAL FROM THE FINAL JUDGMENT
OF DATE 24 JANUARY, 1983 ENTERED IN THIS ABOVE CASE ON DATE
25 JANUARY, 1983. PETITIONER, WHO IS APPELLANT, TAKES THIS AP-
PEAL TO THE SUPREME COURT OF THE UNITED STATES AS IS PROPER UN-
DER PROVISIONS OF 28 U.S.C. SECTION 2101, AND IS AUTHORIZED BY
28 U.S.C. SECTION 2106. THE PARTIES TAKING THIS APPEAL ARE
RANDOLPH E. NEAL, JR.--PETITIONER AS APPELLANT.

DONE THEN, THIS THE 2ND DAY OF FEBRUARY, 1983.

Randolph E. Neal, Jr.

RANDOLPH E. NEAL, JR., PRO SE
2211 BIDE-A-WEE DR., NE
HUNTSVILLE, ALABAMA 35801
205/534-5361

Certification of Service

I certify I have mailed a copy of
the foregoing to opposing counsel's
address on file at his last
known address, postage prepaid,
this 8th day of Feb., 1983.

R. E. Neal, Jr.

COURT DOCUMENTATION

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

FILED

FEB 2 1983

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JAMES E. VANDEGRIFT, CLERK

RANDOLPH E. NEAL, JR.,

Petitioner,

-Vs-

THE STATE OF ALABAMA,

Respondent.

CR-83-HM-00024-NE

ENTERED

FEB 2 1983

ORDER

Randolph E. Neal, Jr., petitioner, filed in this court, pro se and in forma pauperis, a petition for removal of a criminal case pending against him in the Municipal Court of the City of Huntsville, Alabama to the United States District Court for the Northern District of Alabama. Petitioner alleges that his petition for removal was based upon 28 U.S.C. § 1446.

Petitioner alleged as grounds for removal that he was being denied his constitutional right to a trial by jury. All criminal cases in the Municipal Court of the City of Huntsville, Alabama are disposed of without a jury. If such a defendant is convicted, he has a right to appeal and receive a trial de novo before a jury.

On January 24, 1983, this court found that the petition for removal was without merit and dismissed the petition pursuant to 28 U.S.C. § 1446(c)(4). Petitioner has now attempted to appeal

in forma pauperis from this court's ruling by submitting to the Clerk of the court a Notice of Appeal.

Title 28 U.S.C. § 1447(d) provides that an order remanding a case to the state court is not reviewable on appeal except that an order remanding a case to the state court from which it was removed pursuant to § 1443 shall be reviewable on appeal. Title 28 U.S.C. § 1443 provides for the removal of criminal civil rights cases to a United States District Court when a person is denied or cannot enforce in the courts of the state a right under any law providing for equal civil rights of citizens or for any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law. The two-tier system of justice does not operate to deprive a defendant of his right to a jury trial. Ludwig v. Massachusetts, 416 U.S. 816 (1976). Petitioner has, therefore, not alleged the denial of any right protected by the Constitution of the United States nor has he alleged any denial of the equal protection of the Constitution and laws of the United States. This court's decision to dismiss the petition for removal is, therefore, not reviewable.

In addition, the court finds that the Notice of Appeal is frivolous and, therefore, this court cannot certify that the appeal is taken in good faith. Rule 15, Interim Rules, United States Court of Appeals for the Eleventh Circuit.

It is therefore ORDERED that petitioner's request to be allowed to appeal in forma pauperis be and the same hereby is DENIED.

The Clerk will furnish a copy of this order to petitioner and the Clerk, Municipal Court of the City of Huntsville, Alabama.

DONE, this 2nd day of February, 1983.

E. B. Haltom Jr.

E. B. HALTOM, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ALABAMA, NORTHEASTERN DIVISION

RANDOLPH E. NEAL, JR.)
PETITIONER)

VS.)

THE STATE OF ALABAMA)
RESPONDENT)

EX PARTE: RANDOLPH E. NEAL, JR.)

CASE NO. CR-83-HM-0024-NE

FILED

JAN 26 1983 3:20
mal

MOTION FOR STAY PENDING APPEAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JAMES E. VANDEGRIFT, CLERK

COMES NOW YOUR PETITIONER, RANDOLPH E. NEAL, JR., BY AND
THROUGH HIS ATTORNEY OF RECORD WHO IS THE SAME, PRO SE, AND
WOULD SHOW UNTO THE COURT THE FOLLOWING:

A. THAT ON THE 26th DAY OF JANUARY, 1983, PETITIONER
FILED WITH THE CLERK OF THE DISTRICT COURT, A NOTICE OF
APPEAL OF THE ABOVE STYLED CASE TO BE TAKEN TO THE COURT
OF APPEALS OF THE ELEVENTH CIRCUIT UNDER FEDERAL RULES
OF APPELLATE PROCEDURE, RULES 3, 4, & 24(a) PARAGRAPH 2, AND;

B. THAT MR. RANDOLPH E. NEAL, JR. IS SCHEDULED FOR TRIAL
AT 3:30 P.M. ON THIS DAY, JANUARY 26, 1983, IN THE MUNICIPAL
COURT OF THE CITY OF HUNTSVILLE, ALABAMA, AND;

C. THAT MR. RANDOLPH E. NEAL, JR. HAS BEEN DEPRIVED OF
THE EFFECTIVE BENEFIT OF COUNSEL, DUE TO THE FACTS THAT
HIS APPOINTED COUNSEL WAS SEEN ON THE DEFENDANT'S BENCH
WITH ATTORNEYS AND DEFENDANTS OF THE CITY OF HUNTSVILLE
AND THE CITY OF HUNTSVILLE POLICE CHIEF DURING THE RECENT
WELL PUBLICIZED "DANNY CERTAIN TRIAL" IN THE MADISON
COUNTY CIRCUIT COURT, AND COUNSEL HAS NEVER CONTACTED NOR
ATTEMPTED TO DISCUSS THE DEFENSE OF THE PETITIONER'S CASE
WHATSOEVER EXCEPT TO TELL THE PETITIONER THAT HE DIDN'T
WANT TO DEFEND THE CASE, AND;

D. THAT MR. RANDOLPH E. NEAL, JR. HAS BEEN DENIED THE
RIGHT TO A JURY TRIAL, THE RIGHT TO HAVE COMPULSORY PROCESS
FOR OBTAINING WITNESSES IN HIS FAVOR, THE RIGHT TO HAVE
ASSISTANCE OF COUNSEL FOR HIS DEFENSE, THE RIGHT TO AN
INDICTMENT BY THE GRAND JURY, AND THE RIGHT TO A SPEEDY
AND PUBLIC TRIAL, ALL OF THESE VIOLATIONS IN DIRECT AND
FLAGRANT DISREGARD AND PURPOSEFULLY DONE IN CONTRAVENTION
OF THE CONSTITUTION OF THE UNITED STATES, AMENDMENTS
V., VI., AND XIV., WHICH GUARENTEE ALL CITIZENS CERTAIN
UNALIENABLE RIGHTS, AND ARE THE CORNERSTONE OF THIS
DEMOCRACY.

DENIED

xv.

Judge

Date

7/26/83 1/26/83

3.32p

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

FILED

JAN 25 1983

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JAMES E. VANDEGRIFT, CLERK

RANDOLPH E. NEAL, JR.,

Petitioner,

-Vs-

THE STATE OF ALABAMA,

Respondent.

CR-83-HM-0024-NE

ENTERED

JAN 25 1983

ORDER

Randolph E. Neal, Jr., petitioner, has submitted to the Clerk of this court an affidavit of poverty and a Petition for Removal. The petitioner is indigent; the Clerk will file this pleading without prepayment of a fee.

It appears from the Petition for Removal and the exhibits thereto that petitioner is facing charges for a traffic offense in the Municipal Court in the City of Huntsville, Alabama. Petitioner has demanded a trial by jury and a request that the matter be transferred to the Circuit Court. This request has been denied.

Title 28 U.S.C. §§ 1446 and 1443 provide the procedure whereby a defendant may request removal of a criminal case to a United States District Court. Section 1443 of Title 28 provides that a pending criminal case may be removed by any person who is "denied or cannot enforce in the courts of such state a right under any laws providing for the equal civil rights of citizens of the United States." Title 28 U.S.C. § 1446 directs the district court to examine the petition promptly and, if it

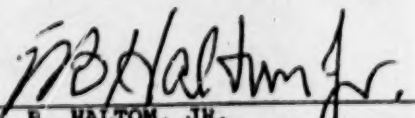
appears that the petition should not be granted, the court should make an order for its summary dismissal. See in this connection Younger v. Harris, 401 U.S. 37 (1971).

If petitioner is convicted in the Municipal Court of the City of Huntsville, Alabama, he has a right to appeal and be afforded a trial de novo before a jury. Petitioner has not been deprived of any constitutional right. The Petition for Removal is frivolous and totally without merit.

It is therefore ORDERED that the Petition for Removal filed by Randolph E. Neal, Jr. be and the same hereby is DISMISSED.

The Clerk will furnish a copy of this order to the petitioner and to the Clerk, Municipal Court of Huntsville, Alabama.

DONE this 24th day of January, 1983.


E. E. HALTON, JR.
UNITED STATES DISTRICT JUDGE

Entered Sept. 15, 1982

IN THE CIRCUIT COURT FOR MADISON COUNTY, ALABAMA

CITY OF HUNTSVILLE, ALABAMA,)
)
Plaintiff,)
)
VS.) CASE NO. _____
)
RANDOLPH E. NEAL, JR.,)
)
Defendant.)
_____)

ORDER

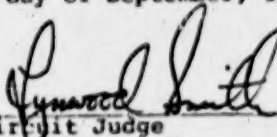
The above-styled matter came on for consideration by the Court upon the petition of RANDOLPH E. NEAL, JR., pro se, for removal of a pending action from the Municipal Court of the City of Huntsville, Alabama to the Circuit Court of Madison County, Alabama for trial by a struck jury. Upon consideration of such petition, the Court is of the opinion that it is due to be denied.

The statutory provisions cited by petitioner [e.g., Ala. Code §§ 12-11-9 (pertaining to the transfer of cases between Circuit Courts and District Courts) and 12-14-1 (apparently pertaining to subsection (c) thereof, providing that District Courts have concurrent jurisdiction with the Municipal Courts of this State over certain acts)] do not support the relief sought. Rather, petitioner's only recourse to the Circuit Court is pursuant to Ala. Code § 12-14-70 (1975), providing for appeal from judgments of municipal courts.

Accordingly, it is ORDERED, ADJUDGED, and DECREED that the relief sought by petitioner be, and the same hereby is, DENIED.

It is further ORDERED that this action be dismissed, pursuant to Rule 12 of the Alabama Rules of Civil Procedure, for failure of petitioner to state a claim upon which relief may be granted. Costs are taxed to petitioner, for which let execution issue.

DONE and ORDERED this 15th day of September, 1982.



Circuit Judge

COPIES:

Randolph E. Neal, Jr.
Municipal Court

APPENDIX

UNITED STATES CONSTITUTION

ARTICLE 3

Section 2, Clause 3. Criminal Trial by Jury.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

ARTICLE 4

Section 2, Clause 1. Privileges and Immunities

Section 2. The Citizens of each State shall be entitled to the Privileges and Immunities of Citizens in the several States.

ARTICLE 6

Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI—JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VIII—EXCESSIVE BAIL, FINES, PUNISHMENTS

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES STATUTORY PROVISIONS

TITLE 28, UNITED STATES CODE

§ 1446. Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.

(b) The petition for removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a petition for removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) The petition for removal of a criminal prosecution may be filed at any time before trial.

(d) Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond with good and sufficient surety conditioned that the defendant or defendants will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

(e) Promptly after the filing of such petition and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(f) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.

June 25, 1948, c. 646, 62 Stat. 939; May 24, 1949, c. 139, § 83, 63 Stat. 101; Sept. 29, 1935, Pub.L. 89-215, 79 Stat. 887.

§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay

(a) A direct appeal to the Supreme Court from any decision under sections 1252, 1253 and 2282 of this title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceedings, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time

for applying for a writ of certiorari for a period not exceeding sixty days.

(d) The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay. June 25, 1948, c. 646, 62 Stat. 961; May 24, 1949, c. 139, § 106, 63 Stat. 104.

§ 2102. Priority of criminal case on appeal from State court

Criminal cases on review from State courts shall have priority, on the docket of the Supreme Court, over all cases except cases to which the United States is a party and such other cases as the court may decide to be of public importance. June 25, 1948, c. 646, 62 Stat. 962.

§ 2104. Appeals from State courts

An appeal to the Supreme Court from a State court shall be taken in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree appealed from had been rendered in a court of the United States. June 25, 1948, c. 646, 62 Stat. 962.

§ 2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances. June 25, 1948, c. 646, 62 Stat. 963.

CODE OF ALABAMA 1975
STATUTORY PROVISIONS

§ 12-11-9. Transfer of cases — Between circuit court and district court.

If a case filed in the circuit court is within the exclusive jurisdiction of a district court or a case filed in the district court is within the exclusive jurisdiction of the circuit court, the circuit clerk or a judge of the court where the case was filed shall transfer the case to the docket of the appropriate court, and the clerk shall make such cost and docket fee adjustments as may be required and transfer all case records. This section does not apply to cases filed in the circuit court prior to January 16, 1977. (Acts 1975, No. 1205, § 2-106.)

§ 12-14-1. Establishment; jurisdiction.

(a) There is hereby established, effective December 27, 1977, for each municipal corporation, hereinafter referred to in this article as "municipality," within the state, except those which elect not to have such courts by ordinance adopted before December 27, 1977, a municipal court subject to the authority, conditions and limitations provided by law.

(b) The municipal court shall have jurisdiction of all prosecutions for the breach of the ordinances of the municipality within its police jurisdiction.

(c) The municipal court shall have concurrent jurisdiction with the district court of all acts constituting violations of state law committed within the police jurisdiction of the municipality which may be prosecuted as breaches of municipal ordinances. (Acts 1975, No. 1205, § 8-101.)

§ 15-8-1. "Indictment" defined.

An "indictment" is an accusation in writing presented by the grand jury of the county, charging a person with an indictable offense. The distinction between indictments and presentments is abolished. (Code 1852, §§ 559, 560; Code 1867, §§ 4109, 4110; Code 1876, §§ 4782, 4783; Code 1886, § 4364; Code 1896, § 4892; Code 1907, § 7130; Code 1923, § 4525; Code 1940, T. 15, § 228.)

§ 15-8-2. Indictable offenses.

All felonies and all misdemeanors originally prosecuted in the district court or circuit court are indictable offenses. (Code 1852, § 558; Code 1867, § 4103; Code 1876, § 4781; Code 1886, § 3702; Code 1896, § 4891; Code 1907, § 7129; Code 1923, § 4524; Code 1940, T. 15, § 227.)

CONSTITUTION OF ALABAMA 1901

ARTICLE I.

Sec. 20. Imprisonment for debts.

That no person shall be imprisoned for debt.

Sec. 35. Objective of government.

That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property, and when the government assumes other functions it is usurpation and oppression.

ARTICLE IV.

Sec. 89. Municipalities not to pass laws in conflict with general laws of state.

The legislature shall not have power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this state.

CONSTITUTION OF ALABAMA 1875

ARTICLE I.

Sec. 7. That in all criminal prosecutions the accused has a right to be heard by himself and counsel, or either; to demand the nature and cause of the accusation; to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and, in all prosecutions by indictment, a speedy public trial by an impartial jury of the county or district in which the offense was committed; and that he shall not be compelled to give evidence against himself, nor be deprived of his life, liberty, or property, but by due process of law.

Sec. 8. That no person shall be accused, or arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished, but by virtue of a law established and promulgated prior to the offense, and legally applied.

Sec. 9. That no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the militia and volunteer forces when in actual service, or, by leave of the court, for misfeasance, misdemeanor, extortion, and oppression in office, otherwise than is provided in this Constitution. Provided, that in cases of petit larceny, assault, assault and battery, affray, unlawful assemblies, vagrancy, and other misdemeanors, the general assembly may, by law, dispense with a grand jury, and authorize such prosecutions and proceedings before justices of the peace, or such other inferior courts as may be by law established.

Sec. 12. That the right of trial by jury shall remain inviolate.

Sec. 16. That excessive fines shall not be imposed, nor cruel or unusual punishments be inflicted.

Sec. 21. That no person shall be imprisoned for debt.

✓ Sec. 37. That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property; and when the government assumes other functions, it is usurpation and oppression.

CASE LAW

Dona Harvey SLY

v.

STATE.

7 Div. 651.

Court of Criminal Appeals of Alabama.

May 1, 1979.

After appealing guilty verdict from District Court, defendant was convicted in Circuit Court, Etowah County, Julius S. Swann, Jr., J., of willfully failing or refusing to comply with a lawful order or direction of an officer invested by law with authority to direct or regulate traffic, and after imposition of fine, defendant appealed. The Court of Criminal Appeals, Bowen W. Simmons, Retired Circuit Judge, held that: (1) notwithstanding fact that prosecution came to Circuit Court by appeal, such prosecution was for an indictable offense, and (2) trial judge was not authorized to assess the fine.

Reversed and remanded.

Myron K. Allenstein, Gadsden, for appellant.

Charles A. Graddick, Atty. Gen., and David W. Clark, Asst. Atty. Gen., for the State.

BOWEN W. SIMMONS, Retired Circuit Judge.

This prosecution originated in the District Court wherefrom, on a judgment of guilt, defendant appealed to the Circuit Court where a jury again convicted him. The trial Judge (not the jury) imposed a fine of \$100.00. No jail sentence was imposed as authorized.

Defendant was charged in the Circuit Court with willfully failing or refusing to comply with a lawful order or direction of an officer invested by law with authority to direct or regulate traffic. Section 32-5-15, Code of Alabama 1975. Punishment for such violation is a fine of not more than \$100.00 for a first offense. Section 32-5-311, Code of Alabama 1975.

The trial court imposed the fine contrary to the provisions of Section 15-18-40, Code of Alabama 1975, which reads:

"In prosecution by indictment, the jury shall fix and determine the amount of the fine, and no judge shall remit or reduce the fine so fixed unless he spreads his reasons for so doing in full on the minutes of the court."

This section applies to an indictable offense as here charged, Section 15-8-2, Code of Alabama 1975. In *Melton v. State*, 45 Ala. 56, Justice Saffold, speaking for the Supreme Court, observed:

"... Although this case came into the circuit court by appeal, and was tried on a complaint, yet it is an indictable offense, and in that court must be deemed a prosecution by indictment."

The Supreme Court refers to Section 3757 of Revised Code, 1867, which is now Section 15-18-40, Code of Alabama 1975, *supra*. See also *Loggins v. State*, 52 Ala App. 204, 290 So 2d 665(2).

The defendant was denied the right to have the jury fix the amount of the fine. The trial court instructed the jury that the court and not the jury had the right "to impose a fine or whatever is provided by statute". The trial Judge was not authorized to assess the fine.

We premit considering other contentions of error.

The judgment is reversed and the cause is remanded for retrial or other disposition that is authorized by law.

The foregoing opinion was prepared by the Honorable BOWEN W. SIMMONS, a retired Circuit Judge, serving as a Judge of this Court, under the provisions of § 6.10, of the new Judicial Article (Constitutional Amendment No. 328); his opinion is hereby adopted as that of the Court.

REVERSED AND REMANDED.

All the Judges concur.

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IN THE UNITED STATES SUPREME COURT

82-6726

RECEIVED

APR 27 1983

OFFICE OF THE CLERK
SUPREME COURT, U.S.

RANDOLPH E. NEAL, JR.
APPELLANT

VS.

CASE NO.

THE STATE OF ALABAMA
APPELLEE

APPLICATION TO FILE SUIT WITHOUT PREPAYMENT OF
FEES OR MAKING DEPOSIT FOR COSTS

I, RANDOLPH E. NEAL, JR., APPELLANT, declare under penalties of
perjury, that I desire to file an action in this court: THE UNITED
STATES SUPREME COURT-----

----- ;
that I do not have nor can I obtain funds to pay the filing fee and to make
a deposit for costs.

Wherefore, I pray that the Court will allow me to proceed without the
payment of fees and without making deposit for costs or posting security
therefor.

This the 25th day of APRIL, 1983 Randolph E. Neal, Jr.

RANDOLPH E. NEAL, JR.
Petitioner

address 2211 BIDE-A-WEE DR.

HUNTSVILLE, ALABAMA 35801

IN THE UNITED STATES SUPREME COURT

RANDOLPH E. NEAL, JR.

(Petitioner)

v.

THE STATE OF ALABAMA

(Respondent(s))

AFFIDAVIT IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS

I, RANDOLPH E. NEAL, JR., being first duly sworn, depose and say that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

I further swear that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes ☒ No ☐
 - a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.
\$1.00 PER QUARTER---NEAL ENTERPRISES, INC.
 - b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?
 - a. Business, profession or form of self-employment? Yes ☒ No ☐
 - b. Rent payments, interest or dividends? Yes ☒ No ☐
 - c. Pensions, annuities or life insurance payments? Yes ☐ No ☒
 - d. Gifts or inheritances? Yes ☒ No ☐
 - e. Any other sources? Yes ☐ No ☒

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. A. \$400.00+

B. \$50.00+

D. \$800.00+

3. Do you own cash, or do you have money in a checking or savings account?

Yes ☒ No ☐ (Include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned.
LESS THAN \$20.00

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes ☒ No ☐

If the answer is "yes," describe the property and state its approximate value. STOCKS OF APPROXIMATE VALUE OF LESS

THAN \$100.00+

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. MYSELF----ALL

I declare under penalty of perjury that the foregoing that the foregoing is true and correct.

Executed on APRIL 25, 1983
(Date)

Randolph E. Neal, Jr.
Signature of Plaintiff

State of ALABAMA
County (City) of RADISON.

RANDOLPH E. NEAL, JR., PETITIONER, being first duly sworn under oath, presents that he has read and subscribed to the above and states that the information therein is true and correct.

Randolph E. Neal, Jr.
Signature of Plaintiff
(Required as to each plaintiff)

Subscribed and sworn to before this
25th day of April, 1983.

Daniel M. Campbell
Notary Public or other
person authorized to
administer oath